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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,222	07/02/2001	Toshiya Mori	NAK1-BP24	9035
21611	7590	09/07/2006	EXAMINER	
SNELL & WILMER LLP 600 ANTON BOULEVARD SUITE 1400 COSTA MESA, CA 92626				VU, NGOC K
		ART UNIT		PAPER NUMBER
		2623		

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/897,222	MORI, TOSHIYA	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ngoc K. Vu	2623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 16 June 2006.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-6,8-15,17-42,44,45 and 47-70 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 10-41,45,47,49,50,52 and 58-70 is/are allowed.

6) Claim(s) 1-6, 8, 9, 42, 44, 48, 51 and 53-57 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

***Response to Arguments***

1. Applicant's arguments filed 6/16/2006 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Objections***

2. Claim 8 is objected to because of the following informalities: it appears that the term "the accumulated broadcast data" in line 7 referring to the first broadcast data has been accumulated. Accordingly, the term "the accumulated broadcast data" in line 7 should be changed to "the accumulated first broadcast data". Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

3. Claims 53-57 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows.

Claims 53-56 define "the broadcast program having a computer execute" and claim 57 defines "the reception program having a computer execute" embodying functional descriptive material. However, the claims do not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized"). The examiner suggests amending the claims to embody the program on "computer-readable medium" or equivalent in order to make the claim statutory. Any amendment to the claim should be commensurate with its corresponding disclosure.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-6, 8, 9, 42, 44, 48, 51, 53 and 56 are rejected under 35 U.S.C. 102(e) as being anticipated by Zigmond et al. (U.S. 6,698,020 B1).

Regarding claim 1, Zigmond teaches a broadcast apparatus (62, 66, 70 – see figure 4) for broadcasting broadcast data comprising: acquiring means for acquiring a first broadcast data group including at least first broadcast data (advertisements) and a reproduction time period (time period for displaying video program and/or advertisements) in which the first broadcast data is to be reproduced by a reception apparatus (an advertiser may specify that its advertisement is to be shown during a particular video program. See col. 12, lines 53-56); and broadcasting means for repeatedly broadcasting the first broadcast data from a specific time to an end of the reproduction time period, the specific time being a point in time before a start of the reproduction time period, and a time period between the specific time and the start of the reproduction time period being a predetermined time period (the provider broadcasts the advertisements on a periodic basis and before displaying the advertisements. See col. 15, lines 5-16); cache instruction broadcasting means for broadcasting a cache instruction (ad selection rules of ad selection criteria) before the start of the reproduction time period, the cache instruction instructing the reception apparatus to cache the first broadcast data (ad selection criteria instructs the receiver to store the filtered advertisements according to ad selection rules

of ad selection criteria that are delivered from the provider via advertisement delivery channel or over broadcast signals. See col. 11-12, lines 66-3; col. 11, lines 31-37; col. 5, lines 17-27); and reproduction instruction broadcasting means for broadcasting a reproduction instruction (triggering event or signal) during the reproduction time period, the reproduction instruction instructing the reception apparatus to reproduce, when the first broadcast data has been cached according to the cache instruction, the cached broadcast data (see col. 8, lines 35-37 and 51-54; col. 15, lines 35-65).

Regarding claim 2, Zigmond teaches the acquiring means further acquires second broadcast data (video programming) which is to be reproduced before the first broadcast data (the device 60 interrupts the display of the video programming feed for displaying the selected advertisement to the viewer. That is, the advertisements are reproduced after displaying the video programming. See col. 7, lines 23-29), and the broadcasting means repeatedly broadcasts the second broadcast data until the specific time (It is noted that video switch interrupts delivery of the video programming feed and delivering the selected advertisement at the appropriate time according to the presence of a triggering signal. Accordingly, the video programming is broadcasted in a constant manner until the time for inserting the advertisement is met. See col. 16, lines 36-48; col. 17, lines 35-37).

Regarding claim 3, Zigmond teaches that wherein the broadcasting means broadcasts the second broadcast data on a predetermined bandwidth (delivery channel) until the specific time and broadcasts the first broadcast data on the predetermined bandwidth from the specific time (see col. 7, lines 13-29).

Claims 4-6 recite the similar limitations of claims 2-3, therefore, they are rejected for the same reasons. Please see rejection of claims 2-3 above.

Regarding claim 8, Zigmond teaches that wherein the cache instruction broadcasting

means broadcasts the cache instruction to instruct the reception apparatus to perform the caching by accumulating the first broadcast data (ad selection criteria instructs the receiver to store the filtered advertisements according to ad selection rules of ad selection criteria. See col. 11-12, lines 66-3; col. 11, lines 31-37; col. 5, lines 17-27), and the reproduction instruction broadcasting means broadcasts the reproduction instruction to instruct the reception apparatus to reproduce, when the first broadcast data has been accumulated according to the cache instruction, the accumulated broadcast data (displaying or reproducing the stored advertisements according the triggering event or signal – see col. 15, lines 57-65), and when the first broadcast data has not been accumulated according to the cache instruction, the first broadcast data broadcast by the broadcasting means (in an alternative embodiment, advertisements are delivered to the ad insertion device, selected, and displayed “on the fly” without any actual intermediate storage of the advertisements in the ad insertion device. See col. 15-16, lines 66-7).

Regarding claim 9, Zigmond teaches that wherein the cache instruction broadcasting means broadcasts the cache instruction to instruct the reception apparatus to perform the caching by storing the first broadcast data into a cache memory when the first broadcast data has been stored in a predetermined storage medium (within advertisement repository 86) (see col. 15, lines 24-34), and the reproduction instruction broadcasting means broadcasts the reproduction instruction to instruct the reception apparatus to reproduce, when the first broadcast data has been stored in the cache memory according to the cache instruction, the first broadcast data stored in the cache memory (ad selection criteria instructs the receiver to store the filtered advertisements in the advertisement repository 86 according to ad selection rules of ad selection criteria. See col. 11-12, lines 66-3; col. 11, lines 31-37; col. 5, lines 17-27), and when the first broadcast data has not been stored in the cache memory according to the

cache instruction, the first broadcast data broadcast by the broadcasting means (in an alternative embodiment, advertisements are delivered to the ad insertion device, selected, and displayed "on the fly" without any actual intermediate storage of the advertisements in the ad insertion device. See col. 15-16, lines 66-7).

With respect to claims 42, 48, 51, 53 and 56, these claims recite similar limitations in claim 1. Therefore, claims 42, 48, 51, 53 and 56 are rejected for the same reasons as indicated in claim 1.

With respect to claim 44, this claim recites similar limitations in claim 9. Therefore, claim 44 is rejected for the same reasons as indicated in claim 9.

***Allowable Subject Matter***

6. Claims 10-41, 45, 47, 49, 50, 52, and 58-70 allowed.

7. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to teach or fairly suggest the limitations "multiplexing means for repeatedly multiplexing...being a predetermined time period", "judging means for judging...of the first program data", "multiplexing means for...during the broadcast time period", and "cache instruction broadcast means for...the cached additional data." as recited in claims 10, 33, 36, 38, 45, 49, 50 and 52.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ngoc K. Vu whose telephone number is 571-272-7306. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ngoc K. Vu  
Primary Examiner  
Art Unit 2623

September 5, 2006